

FINDING OF EMERGENCY

These regulations are being implemented on an emergency basis for the immediate preservation of the public peace, health and safety or general welfare, within the meaning of Government Code section 11346.1. Further, Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the Office of Administrative Law (OAL), OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6. To determine the OAL five day comment period, check <http://www.oal.ca.gov/> often.

DESCRIPTION OF SPECIFIC FACTS WHICH CONSTITUTE THE EMERGENCY

This Enhanced Behavioral Supports Homes (EBSHs) regulation package shall be processed as emergency regulations with the Office of Administrative Law as authorized by the Legislature in SB 856 (Chapter 30, Statutes of 2014) Section 6. These regulatory adoptions are necessary for the establishment of the EBSHs as a subcategory of Adult Residential Facilities and Group Homes, which requires certification by the California Department of Developmental Services (DDS) and licensure by the California Department of Social Services (CDSS).

SB 856 added Health and Safety Code, Section 1567.68 which, provides:

(b) Emergency regulations to implement this article may be adopted by the director of the State Department of Social Services in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). These regulations shall be developed in consultation with system stakeholders. The initial adoption of the emergency regulations and one readoption of the initial regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare. Initial emergency regulations and the first readoption of those emergency regulations shall be exempt from review by the Office of Administrative Law. The emergency regulations authorized by this section shall be submitted to the Office of Administrative Law for filing with the Secretary of State and shall remain in effect for no more than 180 days.

(c) The adoption, initial amendment, repeal, or readoption of a regulation authorized by this section is deemed to be an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare for purposes of Sections 11346.1 and 11349.6 of the Government Code, and the State Department of Social Services is hereby exempted from the requirement that it describe specific facts showing the need for immediate action. A certificate of compliance for these implementing regulations shall be filed within 24 months following the adoption of the first emergency regulations filed pursuant to this section. The emergency regulations may be readopted and remain in effect until approval of the certificate of compliance.

The Emergency intervention and secured perimeters provisions are essential components of the EBSH subcategory and as such these provisions must be included in this emergency regulation package. This is necessary in order to maintain immediate preservation of public peace, health and safety as well as the general welfare of the population that will be served by the EBSHs.

INFORMATIVE DIGEST

Current statutes and regulations establish the provisions necessary for CDSS licensure and oversight of Adult Residential Facilities and Group Homes, as well as for the care and protection of the individuals who live in those facilities. The regulations in this package involve three primary areas where the CDSS will now license and enforce several types of services for its clients: Enhanced Behavioral Supports Homes (EBSHs), Secured Perimeters, and Emergency Intervention. They are closely related because they will either automatically apply or are likely to generally apply to the expected increase in care for developmentally disabled individuals who are currently largely housed in the developmental centers operated by DDS. As discussed in the statement of reasons for the EBSHs, the new law creating those homes specifically assigned both CDSS and DDS crucial roles in overseeing, licensing and enforcing regulations for those individuals. Therefore those roles are not only intertwined between those two departments, but also closely related to the roles of potential use of Secured Perimeters and/or Emergency Intervention in those new facilities. For that reason, these are all closely related regulations and best assessed and promulgated as a whole, rather than various pieces. Since the new statutes call for emergency status for the EBSHs regulations, the additional crucial components regarding Secured Perimeters and Emergency Interventions have equal urgency and call for immediate promulgation. This is necessary in order to maintain immediate preservation of public peace, health and safety as well as the general welfare of the population that will be served by the EBSHs.

The CDSS has determined that the proposed EBSH regulations will affect Adult Residential Facilities and Group Homes. These regulations will be adopted to implement Senate Bill (SB) 856 (Chapter 30, Statutes of 2014) that established EBSH as a subcategory of Adult Residential Facilities and Group Homes, which requires certification by the DDS and licensure by the CDSS.

In order to ensure all the necessary provisions are established in Title 22 of the California Code of Regulations to successfully license the EBSH subcategory, the following provisions must also be included:

- Emergency intervention provisions as developed from SB 130 (Chapter 750, Statutes of 2003), which provide the requirements to establish regulations specific to the use of physical restraints and seclusions in Adult Residential Facilities.
- Secured perimeters provisions as developed from Assembly Bill 1472 (Chapter 25, Statutes of 2012), which authorize the installation of secured perimeters around Adult Residential Facilities and Group Homes that utilize delayed egress devices.

The Department considered other possible related regulations in this area, and we find that these are the only regulations dealing in this subject area (Licensing of EBSHs), and therefore, the Department finds that these proposed regulations are compatible and consistent with the intent of

the Legislature in adopting SB 856, SB 130, AB 1462 and SB 82 (Chapter 23, Statutes of 2015), as well as with existing state regulations.

The CDSS developed the regulations in consultation with system stakeholders DDS, Regional Centers, and Disability Rights California.

COST ESTIMATE

1. Costs or Savings to State Agencies: No fiscal impact exists.
2. Costs to Local Agencies or School Districts Which Must Be Reimbursed in Accordance With Government Code Sections 17500 - 17630: N/A
3. Nondiscretionary Costs or Savings to Local Agencies: No fiscal impact exists.
4. Federal Funding to State Agencies: No fiscal impact exists.

LOCAL MANDATE STATEMENT

These regulations do impose a mandate upon local agencies. The mandate is not required to be reimbursed pursuant to part 7 (commencing with Section 17500) of Division 4 of the Government Code or Section 6 of Article XIII B of the California Constitution because implementation of the regulations only impact licensees that make the business decision to admit the clients which would require these regulatory provisions. There is no requirement for licensees to work with clients that present behavioral issues.

AUTHORITY AND REFERENCE CITATIONS

The CDSS adopts these regulations under the authority granted in Sections 1530, 1531.15, 1567.64 and 1567.82, Health and Safety Code; Sections 4684.80, 4684.81, 4684.82, 4684.83 and 4684.86, Welfare and Institutions Code. Subject regulations implement and make specific Sections 1180, 1180.1, 1180.2, 11810.3, 1180.4, 1180.5, 1501, 1502, 1507, 1509, 1530, 1531, 1531.15, 1562 and 1562.3, Health and Safety Code; Sections 4684.80, 4684.81, 4684.82, 4684.83 and 4684.86, Welfare and Institutions Code; Sections 2700, 2834 2838, 4996-4998.5 and 4980-4984.7, Business and Professions Code; Section 54342, California Code of Regulations, Title 17.